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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 UNITED STATES OF AMERICA,  
12  
13 vs.  
14 UMBERTO HERNANDEZ-  
15 VASQUEZ,  
16 Defendant.

CASE NO. 15cr2517 WQH  
ORDER

17 HAYES, Judge:

18 The matter before the Court is the request by the Defendant to represent himself  
19 in this proceeding.

20 **BACKGROUND FACTS**

21 On September 4, 2015 Defendant was arrested and a complaint filed charging the  
22 Defendant with being a removed alien found in the United States in violation of 8  
23 U.S.C. § 1326(a) and (b). Defendant was represented by counsel from the Federal  
24 Defenders Office.

25 On September 30, 2015, an indictment was filed charging the Defendant with one  
26 count of removed alien found in the United States in violation of 8 U.S.C. § 1326(a) and  
27 (b).

28 On October 1, 2015, Defendant was arraigned on the indictment and requested  
substitute counsel. The court appointed substitute counsel at the request of the  
Defendant.

1 On December 21, 2015, Defendant again requested substitute counsel and the  
2 Court denied the request finding insufficient reasons. The Court found no ill will or  
3 conflict between Defendant and his appointed counsel.

4 Counsel for Defendant moved the Court for a psychiatric evaluation.

5 On January 20, 2016, the Court ordered a psychiatric evaluation.

6 On February 22, 2016, this Court reviewed the competency evaluation which  
7 concluded that there is no objective evidence to indicate that the Defendant is suffering  
8 from any mental disease or defect rendering him unable to understand the nature and  
9 consequences of the court proceedings against him or unable to assist properly in his  
10 defense. The Court found Defendant to be competent. Defendant again requested  
11 substitute counsel and the Court appointed Defendant's third and present counsel. The  
12 Court vacated the trial date set a new trial date for August 2, 2016. Defense counsel  
13 filed motions for discovery and motions in limine.

14 On July 18, 2016, the Court set a hearing at the request of defense counsel. At  
15 the hearing, Defendant requested to represent himself. The Court ordered a second  
16 psychiatric evaluation and requested that the evaluator address whether the Defendant  
17 is mentally competent to represent himself. The Court vacated the August 2, 2016 trial  
18 date.

19 On September 6, 2016, the Court held a competency hearing to review the  
20 evaluation. The forensic report prepared by a forensic psychologist dated August 19,  
21 2016 concluded that there is no objective evidence to indicate that the Defendant is  
22 suffering from any mental disease or defect rendering him unable to understand the  
23 nature and consequences of the court proceedings against him or unable to assist  
24 properly in his defense. The report further concluded that the Defendant is not able to  
25 represent himself in future court proceedings based upon Defendant's low average  
26 intellectual functioning, anxiety and general fearfulness, poor reasoning and insight.  
27 Defendant again requested substitute counsel. After inquiry, the Court denied the  
28 request for substitute counsel. The Court considered the timeliness of the motion, the

1 reasons stated by the Defendant, and the extent of any breakdown of communication  
2 and consequent inability to present a defense. The Court concluded that the case had  
3 been significantly delayed. The Court found that the nature of the conflict asserted by  
4 the Defendant was based on the Defendant's general unreasonableness. The Court  
5 noted that present counsel had filed motions, that present counsel had conducted  
6 himself professionally, and that present counsel was more than competent to defend this  
7 case. The Court found no ill-will between present counsel and the Defendant and found  
8 no reason to conclude that the same conflicts will not arise with another counsel. Under  
9 the facts of this case, this court did not conclude that the conflict that the Defendant  
10 appears to have with his counsel was extensive or irreconcilable. The Court concluded  
11 that defense counsel can adequately represent the Defendant.

12 On September 8, 2016, the Court held a further status hearing. Defendant  
13 requested to represent himself and the Court took this request under submission.

14 On September 14, 2016, the Court held a further status hearing in order to inform  
15 the Defendant of the (1) the nature of the charges against him; (2) the possible  
16 penalties; and (3) the dangers and disadvantages of self-representation. Defendant  
17 continued to assert his constitutional right to self-representation.

### 18 **RULING OF THE COURT**

19 The Sixth Amendment to the U.S. Constitution grants a criminal defendant the  
20 right to refuse the assistance of counsel and to represent himself in criminal  
21 proceedings. *United States v. Lopez-Osuna*, 242 F.3d 1191, 1198-99 (9th Cir. 2001)  
22 (citing *Faretta v. California*, 422 U.S. 806 (1975)). This right to self-representation  
23 may be overridden if: (1) the defendant does not knowingly and intelligently waive his  
24 right to counsel, or (2) he is not "able and willing to abide by rules of procedure and  
25 courtroom protocol." *Lopez-Osuna*, 242 F.3d at 1199 (quotation omitted). In addition,  
26 the Court has consider Defendant's mental competency to represent himself. "The  
27 standard for a defendant's mental competence to stand trial is now different from the  
28 standard for a defendant's mental competence to represent himself or herself at trial."

1 *United States v. Ferguson*, 569 F.3d 1060, 1068 (9th Cir. 2009). Generally, a defendant  
2 who knowingly, voluntarily, and intelligently waives the right to counsel must be  
3 permitted to represent himself at trial. *Faretta v. California*, 422 U.S. 806, 835 (1975).  
4 However, in *Indiana v. Edwards*, 554 U.S. 164, 128 S.Ct. 2379 (2008), the Supreme  
5 Court noted that “in certain instances an individual . . . will be able to work with  
6 counsel at trial, yet at the same time he may be unable to carry out the basic tasks  
7 needed to present his own defense without the help of counsel.” *Id.* at 2386. “Insofar  
8 as a defendant's lack of capacity threatens an improper conviction or sentence,  
9 self-representation in that exceptional context undercuts the most basic of the  
10 Constitution's criminal law objectives, providing a fair trial.” *Id.* at 2387.

11 In this case, the Court fully informed the Defendant of the (1) the nature of the  
12 charges against him; (2) the possible penalties; and (3) the dangers and disadvantages  
13 of self-representation. *Lopez-Osuna*, 242 F.3d at 1199. The Court advised the  
14 Defendant that a trained lawyer would defend him better than he can defend himself and  
15 that it is unwise to represent himself. Defendant informed the Court that understood the  
16 elements of the offense charged and the possible penalties. Defendant informed the  
17 Court that he was familiar with and willing to abide by the rules of evidence and  
18 procedure. Defendant repeatedly requested an opportunity to represent himself and to  
19 press his case before the Court. The Court concludes that there are no grounds upon  
20 which to deny the Defendant his right to represent himself under the Sixth Amendment  
21 to the United States Constitution. Defendant repeatedly affirmed that his waiver of  
22 counsel was knowing, intelligent, and unequivocal.

23 In this case, the Court has ordered two psychiatric evaluations of the Defendant.  
24 Each evaluator found that there is no objective evidence to indicate that the Defendant  
25 is suffering from any mental disease or defect rendering him unable to understand the  
26 nature and consequences of the court proceedings against him or unable to assist  
27 properly in his defense. Each evaluator found that the Defendant understands the  
28 various roles of the court participants and the adversarial nature of court proceedings.

1 Each evaluator found that the Defendant was upset about the potential sentence he faces  
2 and the inability of his counsel to obtain a lower sentence. While the second evaluator  
3 concluded that the Defendant is not able to represent himself in future court proceedings  
4 based upon Defendant's low average intellectual functioning, anxiety and general  
5 fearfulness, poor reasoning and insight, this conclusion was not based upon any  
6 evidence of a lack of mental capacity to conduct trial proceedings. The evaluator  
7 concluded, like the Court, that it would be unwise for the Defendant unfamiliar with and  
8 untrained in the law to represent himself. Under the facts of this case, the Defendant's  
9 constitutional right to self-representation is not overridden by any mental competency  
10 limitation recognized by the United States Supreme Court in *Indiana v. Edwards*.

11 IT IS HEREBY ORDERED that the request by the Defendant to represent  
12 himself in this proceeding is granted. Counsel for the Defendant will remain as  
13 advisory counsel.

14 IT IS FURTHER ORDERED that the Court will hold a status hearing on  
15 September 19, 2016 at 2 p.m.

16 DATED: September 14, 2016

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18 **WILLIAM Q. HAYES**  
19 United States District Judge  
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